

Issued February 24, 1912.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1265.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED MISBRANDING OF GRANT'S HYGIENIC CRACKERS.

On November 4, 1910, the grand jurors of the United States within and for the Northern District of California, after presentation by the United States Attorney upon a report of the Secretary of Agriculture, returned an indictment to the United States District Court for said district against the Hygienic Health Food Co. (Inc.), alleging shipment by it, in violation of the Food and Drugs Act, on or about June 15, 1909, from the State of California into the State of Texas of 5 cases of crackers which were alleged to be misbranded. The product was labeled: "Sold in Packages only. Grant's Hygienic Crackers. No predigested stuff are they. But solid food for work or play. Just read what leading doctors say of Grant's Hygienic Crackers. For Constipation, Indigestion, Dyspepsia and Sour Stomach. Ideal food for general family use. A daily regulator. A week's trial will convince you. Eaten daily in the place of bread will keep the system in perfect order. Recommended & prescribed by leading physicians & dentists. Manufactured by The Hygienic Health Food Co. Inc. Berkeley, Cal. Sold in Packages only."

Analysis of a sample of said product made by the Bureau of Chemistry of the United States Department of Agriculture showed the following results:

	Per cent.
Moisture	10.48
Protein (6.25×N)	10.18
Crude fibre	1.39
Fat	3.50
Ash	1.70
Non-nitrogenous extract by difference	72.75

It consists largely of wheat. An abundance of bran tissues present as in graham flour.

Misbranding was alleged for the reason that the label bore statements concerning the ingredients of said product and claimed therapeutic properties therein for the cure of the diseases mentioned in said label, which statements were false and misleading, and calcu-

lated to mislead and deceive the purchaser, because said product was not possessed of the therapeutic properties claimed for it. The Hygienic Health Food Co. (Inc.) filed a demurrer to the indictment on the ground that it did not state an offense under section 8 of the aforesaid act. The court, in sustaining the demurrer, rendered the following opinion:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT
OF CALIFORNIA.

THE UNITED STATES OF AMERICA	} No. 4833.
<i>vs.</i>	
HYGIENIC HEALTH FOOD CO., INC., <i>Defendant.</i>	

DE HAVEN, District Judge.

The indictment charges that the defendant upon a date named, shipped from the Northern District of California, to one J. P. Watson, at El Paso, Texas, "five cases, labeled, 'Grant's Hygienic Crackers', which were then and there intended as an article of food. That each package in each case was then and there mis-branded under the provisions of the Food and Drug Act of June 30, 1906, section eight thereof, in that it contained false and misleading statements, for the following reasons: The label on each package in each of the five cases aforesaid bore the following inscription: 'Sold in Packages only Grant's Hygienic Crackers No predigested stuff are they But solid food for work or play Just read what leading doctors say of Grant's Hygienic Crackers for Constipation, Indigestion, Dyspepsia and Sour Stomach. Ideal food for general family use A daily regulator A week's trial will convince you Eaten daily in place of bread will keep the system in perfect order. Recommended & prescribed by leading physicians & dentists. Manufactured by the Hygienic Health Food Co., Inc., Berkeley, Cal. Sold in Packages only.'"

The indictment then charges "that whereas in truth and in fact, the said so-called Hygienic Crackers consist largely of wheat and do not, and did not contain any ingredients possessing therapeutic properties for the cure of such diseases as are mentioned in the aforesaid label, other than those possessed by ordinary wheat, and the said statements are calculated to mislead the purchaser into the belief that the said crackers are in fact possessed of rare medicinal properties unwarranted by the composition of the said crackers."

The defendant has demurred to this indictment upon the ground that it does not state an offense under section 8 of the act of June 30, 1906, and I am of the opinion that the demurrer must be sustained.

Subdivision 4 of section 8, of the act referred to in the indictment provides that an article of food shall be deemed to be misbranded "if the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; Provided, That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First: In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced."

I think the indictment may be fairly construed as alleging that the packages therein mentioned contained articles of food known as Grant's Hygienic Crackers, and there is no averment that such described crackers contained any poison or deleterious ingredient; and in my opinion such an averment is necessary to charge an offense where the label upon the package containing an article of food states where it was manufactured or produced, and describes such food by its own distinctive name without stating the ingredients of which such article of food is composed.

The demurrer is sustained.

Decisions of the United States District Courts adverse to the Government will not be accepted as final until acquiescence shall have been published.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *December 22, 1911.*

1265

